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ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL DEVELOPMENT ON BILL 64, *EDUCATION STATUTE LAW AMENDMENT ACT, 1989* AND BILL 65, *OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD AMENDMENT ACT, 1989*

NOVEMBER 20, 1989

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

Airy & Sabine District School Area Board
Asquith-Garvey District School Area Board
Atikokan Board of Education
Brant County Board of Education
Bruce County Board of Education
Caramat District School Area Board
Carleton Board of Education
Central Algoma Board of Education
CFB Borden Board of Education
Chapleau Board of Education
Cochrane-Iroquois Falls Black River Matheson Board of Education
Connell & Ponsford District School Area Board
Dryden Board of Education
Dufferin County Board of Education
Durham Board of Education
East York Board of Education
East Parry Sound Board of Education
Elgin County Board of Education
Espanola Board of Education
Essex County Board of Education
Board of Education for the City of Etobicoke
Foleyet District School Area Board
Frontenac County Board of Education
Ft. Frances-Rainy River Board of Education
Geraldton Board of Education
Grey County Board of Education
Haldimand Board of Education
Haliburton County Board of Education
Halton Board of Education
Hamilton Board of Education
Hastings County Board of Education
Hearst Board of Education
Hornepayne Board of Education
Huron County Board of Education
James Bay Lowlands Secondary School Board
Kapuskasing Board of Education
Kenora Board of Education
Kent County Board of Education
Kilkenny District School Area Board
Kirkland Lake Board of Education
Lake Superior Board of Education
Lakehead Board of Education
Lambton County Board of Education
Lanark County Board of Education
Leeds & Grenville County Board of Education
Lennox & Addington County Board of Education
Lincoln County Board of Education
Board of Education for the City of London
Manitoulin Board of Education
Metropolitan Toronto School Board
Michipicoten Board of Education
Middlesex County Board of Education
Mine Centre District School Area Board
Missarenda District School Area Board
Moose Factory Island District School Area Board
Moosonee District School Area Board
Muskoka Board of Education
Nakina District School Area Board
Niagara South Board of Education
Nipigon-Red Rock Board of Education
Nipissing Board of Education
Norfolk Board of Education
North York Board of Education
North Shore Board of Education
Northern District School Area Board
Northumberland & Newcastle Board of Education
Ottawa Board of Education
Oxford County Board of Education
Peel Board of Education
Perth County Board of Education
Peterborough County Board of Education
Prescott & Russell County Board of Education
Prince Edward County Board of Education
Red Lake Board of Education
Renfrew County Board of Education
Sault Ste. Marie Board of Education
Scarborough Board of Education
Simcoe County Board of Education
Stormont, Dundas & Glengarry Board of Education
Sudbury Board of Education
Timiskaming Board of Education
Timmins Board of Education
Toronto Board of Education
Umfreville District School Area Board
Upsala District School Area Board
Victoria County Board of Education
Waterloo County Board of Education
Wellington County Board of Education
Wentworth County Board of Education
West Parry Sound Board of Education
Windsor Board of Education
Board of Education for the City of York

The Ontario Public School Boards' Association represents Ontario's public school boards of all sizes and from all regions of the province, serving over one million elementary and secondary students and over 500,000 adult learners. OPSBA speaks up for public education and represents the interests of public school trustees to all levels of the provincial government, other public agencies, the public and the media.

Thank you for the opportunity to appear before the Standing Committee on Social Development on the matter of Bill 64 and 65. While we appreciate that the government is committed to the implementation of this legislation by January 1st 1990, we are concerned that the compression of time for the passage of these Bills makes likely the possibility that any problems with the legislation will receive only superficial attention.

Our submission is in two main parts. Firstly, we wish to make some general observations and secondly, we intend to review some specific provisions of the Bills and to seek some amendments to them.

GENERAL OBSERVATIONS

In introducing the Government's policy to be implemented through Bills 64 and 65 on May 18, 1989, Mr. Ward, then Minister of Education, linked the policy to the extension of funding to separate secondary schools. He stated that, "It should be noted that these changes bring to a conclusion the last outstanding issue relative to the decision of this province and this House to provide equality of opportunity to all children in this province, regardless of whether they are enrolled in the public or separate school system." We note the conclusion of outstanding issues, but there are several observations on this statement that we wish to make. We are not clear when the Government or House made such a decision. Bill 30 implemented the policy decision to extend provincial funding to secondary grades 11, 12 and OAC, to provide grants for grades 9 and 10 on a secondary basis to the separate school system and to provide rights to Roman Catholics to direct taxes for secondary school purposes. In itself, this is not a decision to provide equality of opportunity to children enrolled in either the separate or public systems. Nor do we believe such a "decision" will be implemented through Bills 64 and 65.

Rather the decision appears to be one to treat both systems equally - equally "poorly". While some may characterize the pooling policy as the "Robin Hood Principle" - taking from the rich to give to the poor - there is no richness. There is not a school system in the province that has the resources to provide for genuine equal opportunity for all children. Instead there are varying degrees of inadequacy. The difference between the resources available to educate children in low assessment public boards and those available in high assessment public boards are greater than the differences between coterminous separate and public boards.

The real issue is, as OPSBA set it out in its submission to the Select Committee on Education earlier this fall, the inadequacy of the current grant ceilings and the lack of definition of equal educational opportunity and lack of knowledge of its costs.

Redistribution of inadequate existing resources is no solution at all. While the Government has made a commitment to increasing grant ceilings, it is important to note that this is to provide compensation for assessment losses in the short term and does not address the underfunding of elementary and secondary education.

Repeatedly the public has been assured that Government policy regarding separate school education will not adversely affect public schools. To be meaningful, such assurances must ensure that the costs of policies designed to enhance the opportunities of Roman Catholics to exercise their additional constitutional rights are borne by the Government not the local public school systems. Such assurances must protect the philosophical underpinnings of the public system.

OPSBA views with alarm the implicit intention of the Government of Ontario to create two parallel school systems whose equal treatment means the same treatment. The mandates of the separate and public systems are appropriately and significantly different.
The difference cannot be obscured through financing policies without very real risk to the public system's mandate to provide as Mr. Ward, then Minister of Education said, "the best quality of education for all children of this province".

With sincerity we ask what is the Government's, this House's and this Committee's policy on the relationship between separate and public schools?

Is it

that Roman Catholic students should be able to complete their secondary education in a publicly funded system

or

that all children, whether they are Roman Catholics or not, receive equal educational opportunity

or

that the separate school system is to be funded in the same way as the public system

or

that the Province of Ontario has two publicly funded school systems with different mandates

or

that "we now have, as a result of Bill 30, two fully funded public school systems"

This last statement was put forth in the House by the Minister of Education, Hon. Sean Conway, in his opening remarks on second reading debate, November 7,on Bills 64 and 65. We would like confirmation that this statement is in error and does not represent the Government's policy.

These are not fine distinctions. We concur with the McDonald Commission Report that stated; "It is this correspondence between the philosophical and the financial aspects of financing education that magnifies the already formidable difficulty of the subject. For if there is a failure of logic between the how and the why, it is no simple matter to decide whether our values or our funding mechanism, or both, require adjustment."

We believe that legislation should implement the Government's intended policy and that the intended policy needs to be clear.

There are two other matters that we wish to put before you before reviewing specific provisions of the Bills.

The first concerns the scope of the legislation. Notwithstanding Mr. Ward's Statement of "conclusion", Bill 64 includes provisions to extend separate school board boundaries that were not included in his announcement to the Legislature in May, 1989. These changes are not merely administrative.

SPECIFIC CONCERNS

1. SEPARATE SCHOOL BOUNDARY EXTENSION

Included in the legislation providing for the pooling of commercial and industrial assessment between coterminous school boards are amendments to provide for changes to existing separate school boundaries.

The proposed legislative changes, in addition to making the administration of the pooling of commercial and industrial assessment easier, represent another fundamental shift in philosophy. Since the *Scott Act* of 1863, Roman Catholics have held the responsibility of taking specific action to exercise their rights to denominational education. The Government intends to extend separate school jurisdiction in areas where it does not currently exist and where to date Roman Catholics have not exercised their rights to separate schools through existing mechanisms. This is an enhancement of existing rights which ought not to be achieved under the guise of administrative changes to facilitate the implementation of pooling.

By way of summary, changes have been introduced in three areas: (1) the filling-in of zones and the straightening of boundaries; (2) the extension of the boundaries of separate school boards so that they cover the same area of jurisdiction as the coterminous public school board; and, (3) limitations on future separate school zone creation.

Although there are no statutory provisions providing for the extension of the boundaries of district combined separate school boards to coincide with the boundaries of their coterminous public school boards; it has been clearly indicated that, in the regulations, this will be the practice. This provision will have the most impact in Northern Ontario where the separate school boards tend to be smaller than the public school boards.

OPSBA has a number of concerns with regard to the amendments dealing the separate school boundary extensions.

No impact studies have been carried out to determine the effects of the proposed boundary changes on the pooling of commercial and industrial assessment, the viability of existing public schools or programs, student enrolments or shifts in tax revenues.

The overlapping of boundaries, particularly the overlapping of boundaries into municipalities has major implications for the implementation of pooling and the resultant division of the funds.

The impact of these boundary changes has not been included in the compensation package proposed or the estimates published by the Government under the pooling initiative.

Extension of the boundaries could result in additional loss of revenue to the public school board in a pooling scheme.

No consideration has been given to the possible effects on student enrolments and the transfer of residential taxes from the public board to the separate board. These shifts may affect the viability of public education in a number of jurisdictions, particularly in Northern Ontario.

As the Minister of Education suggested to the House, altering boundaries is not a simple matter. We ask that boundary changes not be undertaken without full public scrutiny of any intended changes.

We will provide one example of the complexity of these matters.

The situation in the Norfolk public school is one example of the confusion which exists with regard to the regulations. Norfolk is a unique board in that although extension has not occurred, a small part of the Brant County Roman Catholic Separate School Board juts into the area of jurisdiction of the public school board. As a result, although there are separate school representatives on the Norfolk public school board because extension has not occurred, the public school board has to pay fees for any separate school student in Norfolk who wishes to attend school in the Brant County RCSS Board under the open access provisions. Attempts to have this situation rectified have been unsuccessful. Norfolk is one public board in which the straightening of separate school boundaries proposed in the legislation would be of benefit. However, OPSBA has learned that the government, in the regulations, may make an exception in this area and continue the current situation beyond the grandparent provisions in the legislation. This is unacceptable and illustrates our concerns with the lack of specific information on the proposed regulations.

To date, the Government has made no commitment to provide compensation to public board where shifts in assessment from public boards to separate boards results from changes to separate school board boundaries. We urge the Government to make this commitment prior to passage of Bill 64.

2. SECTION 29 - PROPOSED SECTION 126(5), MAXIMUM DESIGNATION

The maximum proportion of assessment which may be designated by a non-public corporation or a business partnership should be determined by the number of Roman Catholic separate school supporters, rather than by the number of Roman Catholics as is presently proposed. It goes without saying that many Roman Catholics continue to support the public school system.

Accordingly, simple religious affiliation should not be the governing criterion in determining the maximum proportion.

Section 30 - proposed Section 126a(1), definition of "public corporation"

a) Vagueness

O.P.S.B.A. recognizes the need to define the concept of "public corporation", and recognizes as well that any such definition will necessarily be arbitrary in certain respects. What can and should be avoided to the greatest extent possible is uncertainty. If the definition is uncertain, it will 1) make it extremely difficult for taxpaying corporations to regulate themselves, 2) make it extremely difficult for assessment officials to apply the definition and 3) encourage boards and ratepayers to litigate over assessment status.

With this in mind, O.P.S.B.A. is very concerned over the definition of public corporation set out in paragraph (b) of the definition section. The expressions "shares", "market", "regularly published", "bona fide newspaper or financial publication" and "general and regular paid circulation" are a litigator's paradise. The fact that this vague language appears in the *Securities Act* makes it no more acceptable in education law.

O.P.S.B.A. submits that, subject to comments made below, the definitions set out in clauses (a) and (c) of the proposed definition are reasonably close to the legislation's objectives. They are, moreover, capable of reasonably precise application in any given case. It is therefore recommended that these clauses alone be used in the legislation and that clause (b) be deleted.

b) Overbreadth - "affiliate of"

O.P.S.B.A. appreciates the need for a concept of "control" within the "public corporation" definition. If the basic concern of the Bill is the "knowability" of shareholders of large corporations, the same concern may obviously be present where a company is "controlled" by a large corporation. Situations involving indirect control necessitate the use of the concept of "subsidiary".

However, the proposed use of the Securities Act concept of "affiliation" will not serve and will indeed distort the purpose of the Bill. Corporations are "affiliated" whenever they are related in a loose sense. For example, where a closely held family company owns a dozen other companies, they are all "affiliated". But if even one of those "sibling corporations" is a "public corporation", all of the remaining corporations are "affiliates" of that public corporation (including the closely held parent). They would all, by Bill 64, therefore be treated as public. The legislation should not treat all of these corporations in the same way, but rather should continue to distinguish between public and non-public entities in such circumstances.

O.P.S.B.A. submits that the concept of "affiliation" casts a net far broader than that contemplated by Bill 64. The purpose of the legislation can be adequately served by the use of the "control" and "subsidiary" concepts alone. O.P.S.B.A. therefore recommends that the use of the "affiliate" concept be dropped from clause (c) of the "public corporation" definition.

c) Overbreadth - "controlled by"

It is accepted that some degree of arbitrariness will be inherent in any definition of "public corporation". However, O.P.S.B.A. suggests that there be provision made for some sophistication and "fine-tuning" where a closely held corporation is "controlled by" a public corporation and therefore, according to the present Bill, itself "public". The best example would be where a "one-person company" sells a 50% equity interest to a bank or other "public" corporate investor. In such a case, it should be possible for the individual shareholder to designate his or her assessment as desired. O.P.S.B.A. therefore recommends that special rules be developed to deal with the case of a corporation which is "controlled by" a public corporation but which has no more than ten (10) shareholders, of which no more than one is a public corporation.

3. SECTION 30 - PROPOSED SECTION 126A(7)

In his Statement to the Legislature, the Minister announced that additional compensation will be provided so that no public school board will experience a net loss of revenue due to Bills 64 and 65. He stated further that provincial grants to school boards will be increased to ensure that the public school system, on a province-wide basis, does not suffer a loss of revenue.

O.P.S.B.A. understandably regards the initiatives of Bills 64 and 65 with diffidence. These bills represent a fundamental redrawing of jurisdictional and fiscal rules which, in some cases, have existed since Confederation. These changes come at a time when public education finds itself under siege from many quarters. And so it was at least with some small relief and comfort that these assurances were received.

Yet the promise given by the Minister is not even hinted at in the proposed legislation. Specifically, the regulation-making power set out in the new Section 126a(7) is entirely silent with respect to objective or purpose. Given the vicissitudes of governmental affairs, many of which have adversely affected other assurances given to public education in the past, O.P.S.B.A. finds the government's silence on this issue in Bills 64 and 65 unacceptable. Put frankly, if the government is confident the assurance will be met, there is no reason why it should not be reflected in the legislation. If the government is not confident the assurance will be met, all the more reason to ask that it receive legislated status.

O.P.S.B.A. therefore strongly urges the government to incorporate in the Bills the promised protection. This could take the form of a notional assessment base for each public board (based upon 1989 figures) which would be increased annually in accordance with observed increases in assessment. The Province would undertake to make good the shortfall between revenues actually generated and the revenues which would have been generated under the notional assessment base.

There may be other mechanisms which can be used. The point is that these devices ought not to be left to the discretion of the government of the day. At a bare minimum, the totally non-directional words of Section 126a(7) must be redrafted to reflect the intention which has given rise to what is otherwise a totally unfettered allocative power.

Accordingly, and as an alternative, Section 126a(7) must be redrafted to clearly state that cabinet shall make the contemplated regulations adjusting proportions such that neither the province-wide system nor any individual board will suffer a loss of revenue. O.P.S.B.A. also submits that this assurance should not be limited to six years as proposed.

CONCLUDING REMARKS

If passed, Bill 64 will, according to government estimates, transfer at least $180 million of local public school commercial and industrial tax revenue to separate school boards over six years. The Ontario Government has given verbal assurances that public boards will be reimbursed for their losses with provincial grant money. When announcing the policy in the Legislature on May 18, former Education Minister Chris Ward said:

"Public boards of education have always had a mandate to provide the best quality education for all children in this province. They have done this effectively over many generations and I believe the changes we put forward today will ensure they continue to do so with adequate local resources, since in no case will a public board experience a net loss in revenue."

That promise was repeated by new Education Minister Sean Conway on November 7th:

"The Government has said that no board will suffer a net loss of revenue as a result of this policy. I am going to stand behind that commitment. I understand the concern of the public boards out there and that is a legitimate concern."

However, O.P.S.B.A., which represents 92 Ontario public school boards with more than 1.2 million elementary and secondary students and over 500,00 adult learners, firmly believes that a verbal promise is not good enough.

Verbal promises, like Ministers of Education and provincial governments, come and go.

Bill 64 and 65 raise several key concerns. Given the large sums of local education dollars that will be lost to public school boards, the pooling legislation in particular is about more than equality of opportunity. It is about the financial future of the public school system which serves almost two-thirds of Ontario's student population. It is about the real need to protect public school ratepayers against significant increases in residential property taxes should they be forced to make-up for the losses in local commercial and industrial tax revenue if this government, or any government fails to keep its promise. This legislation is about the very special mandate and responsibilities of the public school system.

It is for these reasons that public school boards have every reason to demand legislative protection, for next year, the next six years and the next six decades.

If the Ontario Government will not place its verbal promises in the legislation, then O.P.S.B.A. seriously questions the government's future intentions and commitment to public school students, parents and taxpayers.

When the Ontario Legislature passed Bill 30, the 1985 legislation which extended full provincial funding to Roman Catholic separate school boards, the guarantee of the continued viability of the public school system was placed in the Bill. This was done to assure the people of Ontario that the policy to extend funding would not be done at the expense of the public school system.

Now, by another action of this Legislature, a significant amount of local public school revenue will be diverted to separate school boards. Once again, public school students and taxpayers require a legislative guarantee that their school system will be fully reimbursed, dollar for dollar.

O.P.S.B.A.'s opposition to the pooling of industrial and commercial assessment is a matter of public record. We make these submissions today in a sincere effort to assist the Legislature in the passage of legislation that can be effectively implemented across this province.